

Message Text

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PAGE 01 STATE 013357

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TAGS: ICRC, PARM

SUBJECT: INTERNATIONAL HUMANITARIAN LAW

1. WE REQUEST YOU PROVIDE MILLER (CANADA), GIRARD (FRANCE)
AND FREELAND OR EATON (UK) FOLLOWING TEXTS, WHICH WE PROMISED
TO CABLE DURING WASHINGTON CONSULTATIONS HELD ON JAN. 14.
THESE ARE NOT FINAL TEXTS, BUT INDICATE DIRECTION OF OUR
THINKING.

2. TEXT OF PROPOSED NEW DEFINITIONS TO BE ADDED TO ARTICLE
2 OF PROTOCOL I:

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PAGE 02 STATE 013357

(A) " 'HIGH CONTRACTING PARTY' MEANS A STATE WHICH IS

BOUND BY THE PRESENT PROTOCOL THROUGH RATIFICATION OR ACCESSION."

(B) " 'PARTY TO A CONFLICT' MEANS:

1. A HIGH CONTRACTING PARTY OR STATE WHICH IS INVOLVED AS A PARTY TO A SITUATION REFERRED TO IN ARTICLE 2 COMMON TO THE CONVENTIONS AND AMPLIFIED IN ARTICLE 1 OF THE PRESENT PROTOCOL.

2. A GOVERNMENT OR AUTHORITY REPRESENTING A PEOPLE ENGAGED IN ARMED CONFLICT FOR SELF-DETERMINATION WITHIN THE MEANING OF ARTICLE 1 OF THE PRESENT PROTOCOL, IF SUCH GOV-

ERNMENT OR AUTHORITY HAS, UNDER THE PROVISIONS OF ARTICLE 84 OF THE PRESENT PROTOCOL, ACCEPTED THE OBLIGATION OF APPLYING THE PRESENT PROTOCOL AND THE CONVENTIONS.

(C) " 'COMPETENT AUTHORITIES' MEANS THOSE AUTHORITIES WHO ARE EMPOWERED BY A HIGH CONTRACTING PARTY OR A PARTY TO A CONFLICT TO PERFORM A PARTICULAR FUNCTION RELEVANT TO ANY PROVISION OF THE PRESENT PROTOCOL.

3. TEXT OF PROPOSED AMENDMENT TO ARTICLE 84: REPLACE PARAGRAPH 2 OF ARTICLE 84 WITH THE FOLLOWING TWO PARAGRAPHS:

"2. IF IN THE SITUATIONS PROVIDED FOR IN ARTICLE 2 COMMON TO THE CONVENTIONS AND ARTICLE 1 OF THE PRESENT PROTOCOL ONE OR MORE OF THE GOVERNMENTS OR AUTHORITIES INVOLVED IN THE CONFLICT ARE NOT HIGH CONTRACTING PARTIES, EACH OF THOSE GOVERNMENTS OR AUTHORITIES SHALL ENDEAVOR TO BRING THE CONVENTIONS AND THE PRESENT PROTOCOL INTO FORCE FOR ITSELF AS A PARTY TO THE CONFLICT, EITHER BY MEANS OF SPECIAL AGREEMENTS OR UNILATERAL DECLARATIONS, ADDRESSED TO THE SWISS FEDERAL COUNCIL, ACCEPTING THE OBLIGATIONS OF APPLYING THE CONVENTIONS AND PRESENT PROTOCOL.

"3. THE PARTIES TO A CONFLICT WHO ARE HIGH CONTRACTING PARTIES SHALL REMAIN BOUND BY THE CONVENTIONS AND PRESENT PROTOCOL IN THEIR MUTUAL RELATIONS AND IN RELATION TO PARTIES TO A CONFLICT WHO HAVE ENTERED INTO SPECIAL AGREEMENTS OR ISSUED DECLARATIONS AS STIPULATED IN THE PRECEDING LIMITED OFFICIAL USE

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PAGE 03 STATE 013357

PARAGRAPH. THE PARTIES TO A CONFLICT WHO HAVE ENTERED INTO SUCH AGREEMENTS OR ISSUED SUCH DECLARATIONS ASSUME AS OF THE TIME OF THE DECLARATION OR AGREEMENT AND FOR THE DURATION OF THE CONFLICT THE SAME RIGHTS AND OBLIGATIONS AS A HIGH CONTRACTING PARTY."

4. TEXT OF PROPOSED AMENDMENT TO ARTICLE 88:

(A) REVISE SUBPARAGRAPH (C) OF PARAGRAPH 1 BY INCLUDING REFERENCE TO ARTICLE 84: "(C) COMMUNICATIONS AND DECLARATIONS RECEIVED UNDER ARTICLE 73, 84, 85, AND 86."

(B) ADD A NEW SECOND PARAGRAPH AS FOLLOWS:

"2. THE DEPOSITARY OF THE CONVENTIONS SHALL ALSO INFORM THE PARTIES TO A CONFLICT OF DECLARATIONS OR SPECIAL AGREEMENTS RECEIVED UNDER ARTICLE 84. THE COMMUNICATION OF SUCH DECLARATIONS OR SPECIAL AGREEMENTS SHALL NOT AFFECT THE LEGAL STATUS OF THE PARTIES TO A CONFLICT, NOR SHALL IT BE REGARDED AS A PRONOUNCEMENT OF THEIR LEGAL STATUS. UNDER NO CIRCUMSTANCES SHALL THE COMMUNICATION OF SUCH A DECLARATION BE REGARDED AS AN UNFRIENDLY ACT OR AS INTERFERENCE IN THE ARMED CONFLICT." KISSINGER

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